

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JOHN HALE, #24720

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:15cv170CWR-FKB

ROLANDO ABANGAN, ET AL.

DEFENDANTS

**CENTURION OF MISSISSIPPI, LLC, DR. KIM NAGLE, AND
NURSE EVELYN DUNN’S MOTION FOR SUMMARY JUDGMENT BASED ON
PLAINTIFF’S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

Defendants Dr. Kim Nagle, Nurse Evelyn Dunn, and Centurion of Mississippi, LLC (“Centurion”) (collectively “Centurion Defendants”) file this Motion for Summary Judgment Based on Plaintiff’s Failure to Exhaust Administrative Remedies.¹ In support, the Centurion Defendants set out the following:

1. Plaintiff John A. Hale (“Plaintiff” or “Hale”) filed this *pro se* civil action on March 9, 2015, pursuant to 42 U.S.C. § 1983. (Doc. 1.) On November 18, 2015 he filed an amended complaint, asserting various claims against Dr. Nagel, Nurse Dunn, Centurion, and others. (Doc. 62, 62-1.) He claims violations of his constitutional rights during his incarceration at East Mississippi Correctional Facility (“EMCF”). At all times relevant to the instant action, Plaintiff

¹ The Centurion Defendants previously filed a motion to dismiss Hale’s claims based on his failure to exhaust his available administrative remedies (Doc. 135). The Magistrate Judge converted that motion into a motion for summary judgment and recommended that it be denied because Centurion did not provide an affidavit authenticating Hale’s ARP records. (Doc. 202.) The report and recommendation did not address the merits of the Centurion Defendants’ exhaustion argument, and as such, the Centurion Defendants file this Motion, with authenticated documents, so the Court may consider the issue on the merits. The Magistrate Judge also has extended the deadline for motions to September 20, 2017 in a text order issued on July 24, 2017. As such, the Centurion Defendants’ motion for summary judgment is timely and ripe for the Court’s consideration.

was a post-conviction inmate in the custody of the Mississippi Department of Corrections (“MDOC”) and is proceeding *in forma pauperis*.

2. The crux of Hale’s argument is that Dr. Nagle, Nurse Dunn, and Centurion violated his constitutional rights and denied him a reasonable accommodation under the Americans with Disabilities Act (“ADA”) because the medications the medical professionals have proscribed for him are not the prescription drugs he thinks he should be prescribed. (*See* Docs. 1, 62, 62-1.) He also claims that Centurion has engaged in a practice of denying his rights. (*See* Docs. 1, 62, 62-1.)

3. As set forth in more detail in these Defendants’ separate Memorandum of Authorities, it is undisputed that Hale did not exhaust his available administrative remedies regarding his claims against Dr. Nagle, Nurse Dunn, or Centurion prior to filing suit against them in federal court, as required by the Prison Litigation Reform Act. Accordingly, there are no genuine issues of material fact, and Hale’s claims against these Defendants are barred under 42 U.S.C. § 1997e(a) and should be dismissed as a matter of law.

4. In support of their Motion for Summary Judgment, these Defendants rely on their separate Memorandum of Authorities, as well as the following exhibits attached hereto:

- “A” Excerpts from the Transcript of the August 31, 2016 Omnibus Hearing
- “B” Excerpts from Plaintiff’s Medical Records
- “C” Excerpts from John Hale’s ARP file from EMCF²
- “D” Declaration of Dr. Kim Nagle
- “E” Mississippi Department of Correction’s Administrative Remedies Policy, Ch. VIII

² Complete copies of Hale’s medical records and Administrative Remedies Program records for the relevant time were previously produced to Inmate Hale and the Court at the Omnibus hearing held in this matter.

Defendants have filed a request to file Hale's medical records under seal (Doc. 206), and therefore Exhibit B will be forwarded to the clerk's office under seal upon the Court's granting Defendants' motion to file under seal.

WHEREFORE, PREMISES CONSIDERED, Defendants Dr. Nagle, Nurse Dunn, and Centurion respectfully request that the Court grant their Motion for Summary Judgment Based on Plaintiff's Failure to Exhaust Administrative Remedies and to dismiss all of Plaintiffs claims against them as a matter of law.

Respectfully submitted, this the 28th day of August, 2017.

s/ Michael L. Cowan

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record and have served the foregoing by U.S. Mail, properly addressed and postage prepaid upon:

John Hale

24720

East Miss. Correctional Facility

10641 Highway 80 West

Meridian, MS 39307

s/ Michael L. Cowan

OF COUNSEL